

IN THE MATTER OF THE APPLICATION OF)	
GLIDDEN POINT OYSTER COMPANY, INC.,)	FINDINGS OF FACT,
FOR AN EXPERIMENTAL AQUACULTURE LEASE)	CONCLUSIONS OF LAW AND
LOCATED IN NEWCASTLE, LINCOLN COUNTY,)	DECISION
MAINE)	

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

According to 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on this application unless a hearing is requested in writing by 5 or more interested parties. Notice of the application was published in the June 8, 2000 issue of the Lincoln County News newspaper. No written comments or requests for a hearing were received during the comment period established in 12 M.R.S.A. §6072-A(5).

**Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease**

12 M.R.S.A. §6072-A(8) and the Department regulations, Chapter 2.64(2), require the applicant to provide an application for a limited-purpose (experimental) aquaculture lease. This proposed lease is sought to conduct commercial research and development on the use of 100% non-wood materials for subsurface suspension of oyster grow-up containers to reduce the occurrence of wood boring marine worms that impact wood based suspended equipment. The applicant requests the maximum lease term of three (3) years and a size of two (2) acres with the corrected dimensions of 729.06' by 85.17' by 640.87' by 200'. The proposed lease is located off Jack's Point west of the main navigation channel in the upper Damariscotta River, Newcastle. The applicant requests authority to grow American oysters using suspended culture techniques.

The operation would include the use of up to 208 plastic mesh trays of varied sizes from different manufacturers. Typical tray dimensions would be 2' x 3" or 3' x 3'. Trays would be attached to a submerged rack system made of PVC tubes (piping). The trays would be attached to the PVC racks to suspend the trays approximately 18"- 36" off the bottom. The width of a PVC rack would be approximately 36". The rack system would consist of parallel rows of suspended trays throughout the entire bottom area of the proposed lease. The PVC rack system would have posts driven into the bottom mud approximately 18" deep to moor the system in place. Given that the rack system would be close to the bottom the trays and rack system would be submerged except for 1-2 hours at low tide. Culture activities would take place between the months of April through November. During the winter months the oysters and gear except boundary markers, moorings and lines would be removed.

Husbandry, daily maintenance and harvest activities would be carried out by hand from a boat. Access to the site would be from the private dock and property of Barbara and Kevin Scully in Edgcomb located down river of the proposed lease. Due to the use of gear on the

bottom throughout the proposed lease area the applicant requested that dragging be prohibited on the lease site.¹

Seed American oysters would be obtained from sources such as Pemaquid Oyster Company in Damariscotta, Marshall Point Sea Farm in Port Clyde or Muscongus Bay Aquaculture in Bremen, Maine.

The application describes the bottom to be composed of moderately firm mud of a silt-clay mixture. The area is subtidal with depth ranges of 1' to 10' at mean low water (MLW) and is adjacent to the intertidal area west of the proposed lease. The mean tidal range is 9.5'. The tidal direction follows the north to south axis of the proposed lease and has currents generally less than 0.5 cm/sec. Common local fauna includes oyster drills, green crabs and transient juvenile finfish with an occasional sand shrimp and horseshoe crab.

The proposed lease does not fall within a designated Department of Inland Fisheries and Wildlife (IF&W) essential habitat for threatened or endangered species regulated by their agency. The nearest designated ¼ mile boundaries (for eagles) are located due north over 2 miles due north.

No moorings are located within the proposed lease boundaries. The site is located west of the main navigational channel in the upper Damariscotta River in shallow waters. According to the application the proposed lease is not used for the commercial or recreational harvest of any marine species. The proposed site is considered to be located a sufficient distance from shore to not interfere with safe swimming from the shore estimated to be located over 500' due west. There is a nearby shellfish lease due south and a shellfish lease held by the applicant due north of the proposed lease.

The application included a letter from the local Harbormaster Paul Bryant of Newcastle and owner of Riverside Boat Yard located northwest of the proposed lease. In his opinion the

¹ Pursuant to 12 M.R.S.A. §6957, dragging is prohibited within 300' of the structures used for aquaculture if that area is marked in accordance with that statute.

proposed lease is located well clear of the navigation channel and very shallow. He also indicated that there were no moorings within the proposed lease. In his opinion the proposed lease would not affect the ingress and egress of local property owners and he indicated general support of the application.

Findings of Fact

The proposed lease is located in shallow waters ranging from 1' to 10' MLW adjacent to the intertidal area on the western shore in the upper Damariscotta River off Jack's Point. There are no moorings located within the proposed lease site. A letter from the local Harbormaster confirmed this. In the Harbormaster's opinion the proposed lease would not interfere with riparian ingress and egress in the area. Use of the applicants private dock located down river in Edgecomb from the proposed lease would be used for access. The Department's Assistant Aquaculture Environmental Coordinator (AAEC) confirmed this in a site visit to the area on June 13, 2000. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The application described the area as having little or no navigational traffic due to the shallow waters. According to the local Harbormaster the proposed lease is west of the main navigation channel and traffic in his opinion is light and should not pose interference with navigational uses. Based on this evidence and the maps and charts in the record, I find that the lease will not unreasonably interfere with navigation in the area.

Their nearest existing aquaculture lease is located approximately 354' due south and the applicant has an existing lease due north approximately 442'. The application indicates that no commercial or recreational fishing take place on the proposed site. This was confirmed in a site visit to the area by the AAEC on June 13, 2000. The applicant seeks to prohibit is dragging within the proposed lease boundaries. According to the AAEC's report the area is classified as conditionally open for the harvest of shellfish. This is due to the presence of the Damariscotta sewage treatment plant. The presence of the plant is unlikely to change during the next three years therefore the water quality classification is also considered unlikely to change. Based on

the evidence that there is little or no commercial or recreational fishing within the proposed lease boundaries, that there is adequate space for navigational purposes to access nearby aquaculture leases in area and that the water quality classification of conditionally open is unlikely to change within the next three years, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

The American oysters to be raised would be obtained from indigenous stocks from a nursery sources located within Maine. The proposed activities include only the rearing of American oysters in bags as described in the evidence. Bottom planting of individual organisms is not requested. Nothing in the evidence indicates that the proposed activities would interfere with the local flora or fauna. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The applicants indicate that they would use only indigenous shellfish stocks of American oysters obtained from hatcheries or nurseries located within the State of Maine such as from the Pemaquid Oyster Company, Damariscotta, Marshall Point Sea Farm, Port Clyde or Muscongus Bay Aquaculture, Bremen. Based on this evidence, I find that there is an available source of American oysters.

According to the application the proposed lease would be located approximately 2807' from the Damariscotta public boat landing due north-northeast and approximately 1428' to the private dock and landing facility located at Riverside Boat Company due north. The applicant's representatives' private dock and property would be used to access the proposed lease. This was confirmed in a site visit to the area by the AAEC on June 13, 2000. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment and that the proposed lease site is not located within 1000 feet of any municipally, state or federally owned beaches, parks or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner,
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested lease of two (2) acres to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating American oysters, using suspended (bottom containment) culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and

impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

(1) recreational fishing and boating activities are allowed on the open areas of the lease; dragging shall be prohibited;

(2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources